F. M. S. REPORTS

[APPELLATE CRIMINAL JURISDICTION
MURRAY-AYNSLEY, J.
March 29, 1939.

WILSON v. PUBLIC PROSECUTOR

[PERAK MAGISTRATE'S CRIMINAL APPEAL
No. 9 of 1937]

Road Traffic Enactment (No. 17 of 1937) Sec. 25 (ii)—negligent driving—motor vehicle running off road—presumption of negligence—defence attributing accident to a 'skid'—whether presumption rebutted.

The appellant was charged under section 25 (ii) of the Road Traffic Enactment with driving a motor car on a road in a negligent manner by causing the car to run off the road. He was convicted and sentenced to a fine of $25/- and costs, or in default two weeks rigorous imprisonment. It was also ordered that his license be endorsed under Section 25 (3) of the Enactment. The prosecution could only prove that the vehicle had left the road and fallen into a ravine. The appellant who was the only person present at the time of the accident attributed it to a skid. The learned Magistrate on the evidence found that the marks shown on the road were those of the appellant's vehicle and came to the conclusion that the appellant was guilty of negligence. The appellant based his appeal on the following grounds, among others:—that the learned magistrate was wrong in admitting in evidence (1) a report made by the appellant (2) a sketch plan and (3) four photographs taken of the scene of the accident all of which documents were tendered by a witness for the prosecution. It was submitted on behalf of the appellant that this evidence was inadmissible because neither the person who received the report nor the person who took the photographs was called to testify as to its or their authenticity; because it had not been shown that the sketch plan was made by a person competent to make it. The appellate Judge accepted none of these contentions.

Held, that once the Magistrate is satisfied upon the materials before him that a case of negligence has been made out and that the accused has not produced evidence to rebut the presumption of negligence, an appellate Court ought not to interfere with his decision which is based on a finding of fact.

Held, further, that it was, in the present case, unnecessary to decide whether skidding might not, at the present time, itself be evidence of negligence.

MAGISTRATE'S CRIMINAL APPEAL.

The facts sufficiently appear from the headnote above.

Huntsman for the Appellant.

Brodie, Deputy Public Prosecutor, for the Respondent.

Cur. Ad. Vult.

MURRAY-AYNSLEY, J.—In this case the Appellant was driving a motor vehicle which left the road and fell into a ravine. There were no witnesses to the accident except the Appellant himself.

In the Magistrate's Court the Police could only show that the vehicle had left the road and produced evidence of marks, and asked the Court to infer that these were made by the vehicle in question. In these circumstances can the prosecution be said to have proved that the Appellant was guilty of negligent driving? The English cases (such as *Ellor* v. *Selfridge*, 46 T.L.R. 236) establish the proposition that where a motor vehicle leaves a road without explanation that fact is evidence of negligence, but they also indicate that where it is proved that a "skid" takes place the presumption of negligence no longer holds good (*Wing* v. *London General Omnibus Co.*, 1909, 2 K.B. 652).

In the present case the Appellant who was the only person present at the time of the accident alleged that it was due to a skid.

The highway appears to have been of reasonable width and with a good surface.

It appears to me once there was material on which the Court could find that there was negligence, that is a question of fact whether the Appellant had produced evidence to rebut this presumption. The Magistrate had before him the evidence of wheel marks, which he was entitled to assume were those of Appellant's vehicle and the evidence of Appellant himself. On this I think he was entitled to arrive at the conclusion that the Appellant was guilty of negligence.

I do not pass an opinion as to whether at the present time skidding may not be evidence of negligence.

I do not think that any of the other points raised even if they have any foundation would justify my interfering with the conviction.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
March 29, 1939.

INDUT BIN ISHAK v. PUBLIC PROSECUTOR

[PERAK MAGISTRATE'S CRIMINAL APPEAL
No. 25 of 1939]

Criminal Procedure Code (Cap. 6) S. 68 (b); Penal Code (Cap. 45) S. 411; Minor Offences Enactment (Cap. 46) S. 35—security for good behaviour from persons suspected of having no ostensible means of subsistence—dishonestly retaining stolen property—fraudulent possession of property—trial of proceedings under Criminal Procedure Code taken before those for substantive offences—irregularity.

Three separate charges (1) of having no ostensible means of subsistence (Section 68 (b) the Criminal Procedure Code) (2) of dishonestly retaining stolen property

an offence punishable under Section 411 of the Penal Code and (3) of being in possession of property reasonably suspected of being stolen or fraudulently obtained, an offence punishable under Section 35 of the Minor Offences Enactment, were preferred against the appellant. The proceedings under the Criminal Procedure Code were tried first and after hearing the whole case the Magistrate at Selama postponed sentence pending the trial of the charges for the substantive offences. The Magistrate convicted the appellant on all the charges. On appeal to the Supreme Court:—

Held, that the trial of the proceedings under Section 68 (b) of the Criminal Procedure Code when there were charges pending for substantive offences was irregular and that there should be a new trial before a different Magistrate.

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

Brodie, Deputy Public Prosecutor. for the Respondent.

Cur. Ad. Vult.

MURRAY-AYNSLEY, J.—In this case proceedings were taken against the Appellant under Section 68 (b) Criminal Procedure Code and also for substantive offences under Section 411 of the Penal Code and Section 35 of Cap. 46. The proceedings under the Criminal Procedure Code were taken first. I think that this was wrong as the evidence under those proceedings would be of a kind that is carefully excluded from ordinary criminal proceedings. In view of that I cannot regard the proceedings in the subsequent trial as satisfactory though there was evidence on which the Magistrate could convict. I think the only thing to be done is to order a new trial before a different Magistrate.

I would add that I cannot see the purpose of proceedings under 68 (b) of the Criminal Procedure Code when there is a charge pending for a substantive offence.

New trial ordered.

[REVISIONAL CIVIL JURISDICTION]

AITKEN, J.

March 3, 1939

MANIKAM MANDOR.....Defendant Applicant

vs.

S. MUNIANDY THEVAR..Plaintiff-Respondent

[N. S. MISCELLANEOUS CIVIL APPLICATION No. 11 of 1938]

Civil Procedure Code, S. 237—Courts Enactment (Cap. 2)—Appeal to Court of a Judge from hearing before Magistrate by way of appeal from Court of a Penghulu—Practice—Costs—Power of Court to award or disallow.

The Respondent commenced a suit against the applicant in the Court of the Penghulu for the recovery of $5/- as money lent to the applicant. The Penghulu gave judgment in favour of respondent for the amount claimed and costs. The applicant appealed against this judgment to the Magistrate at Jelubu. The learned magistrate decided to try the case *de novo* and directed the respondent to file a plaint. The respondent filed a plaint claiming $5/- as money deposited with the applicant. A defence was filed denying any such deposit, and pleading the Limitation Enactment. The Magistrate heard the suit by way of appeal from the Penghulu. After hearing, the Magistrate dismissed the claim but ordered that each party should bear his own costs both of the trial in his Court and of the trial before the Penghulu. The Magistrate made no record of his reasons for directing that the costs should not follow the event. Upon the application for review of the Magistrate's decision:—

Held, that the Magistrate should have stated in writing under section 237 (i) of the Civil Procedure Code his reasons for directing that the costs should not follow the event and that the respondent having successfully resisted the claim and not having misconducted himself, was entitled as of right to his costs.

PETITION FOR REVISION.

Rintoul for the Applicant.

C. M. P. Pillay for the Respondent.

Cur. Adv. Vult.

AITKEN, J.—This is a petition presented by the defendant-Applicant asking me to revise a decision of the learned Magistrate at Jelebu whereby he deprived the successful party in an appeal against a judgment of the Penghulu at Kuala Klawang of his costs.

The facts giving rise to this petition are shortly as follows: on the 4th of May 1938, the present Respondent commenced a suit against the present Applicant in the Court of the Penghulu at Kuala Klawang, claiming $5/- as money lent to the applicant and never repaid. On the 16th of August, 1938, the Penghulu heard that suit and gave judgment in favour of the Respondent for the amount claimed and costs.

The Applicant appealed against this judgment to the Magistrate at Jelebu, and counsel appeared before him on the appeal for both parties. After hearing some legal arguments on the record made by the Penghulu, the learned Magistrate decided to hear the whole case "de novo" and directed the Respondent to file a plaint.

In accordance with this direction the Respondent filed a plaint in the Magistrate's Court on the 11th of October, 1938, claiming $5/- from the applicant as money deposited with him in May 1935 for safe keeping. It will thus be observed that the Respondent shifted the basis of his claim, so to speak, from the loan to deposit; and the reasons for this shift appear to be connected with the provisions of the Limitation Enactment. Four days later a defence was filed denying any such deposit, and pleading the Limitation Enactment in the alternative.

The learned Magistrate heard this suit for $5/-, by way of appeal from the Penghulu, on the 10th of November, 1938 with the assistance of Counsel for both parties. At the end of the hearing the learned Magistrate dismissed the Respondent's claim, but directed that the parties